



**MEDICAL BOARD OF CALIFORNIA**  
Executive Office



**Embassy Suites San Francisco Airport**  
**150 Anza Boulevard**  
**Burlingame, CA 94010**

**May 8, 2009**

**MINUTES**

**In order to remain consistent with the record, the agenda items presented in these minutes are listed in the order discussed at the May 8, 2009 meeting.**

**Agenda Item 1      Call to Order/ Roll Call**

Dr. Fantozzi called the meeting of the Medical Board of California (Board) to order on May 8, 2009 at 8:45 a.m. A quorum was present and notice had been sent to interested parties.

**Members Present:**

Richard Fantozzi, M.D., President  
Jorge Carreon, M.D.  
Hedy Chang  
John Chin, M.D.  
Shelton Duruisseau, Ph.D.  
Gary Gitnick, M.D.  
Sharon Levine, M.D.  
Reginald Low, M.D.  
Mary Lynn Moran, M.D.  
Janet Salomonson, M.D.  
Gerrie Schipske, R.N.P., J.D.  
Barbara Yaroslavsky  
Frank V. Zerunyan, J.D.

**Staff Present:**

Barb Johnston, Executive Director  
Kimberly Kirchmeyer, Deputy Director  
Aaron Barnett, Investigator

Fayne Boyd, Licensing Manager  
Adam Brearly, Investigator  
Candis Cohen, Public Information Officer  
Janie Cordray, Research Specialist  
Kurt Heppler, Department of Consumer Affairs Staff Counsel  
Teri Hunley, Business Services Office  
Ross Locke, Business Services Office  
Armando Melendez, Business Services Office  
Kelly Nelson, Legislative Analyst  
Pat Park, Licensing Analyst  
Debbie Pellegrini, Chief of Licensing  
Paulette Romero, Associate Analyst  
Kevin Schunke, Regulation Coordinator  
Dennis Scully, Investigator  
Anita Scuri, Department of Consumer Affairs Supervising Legal Counsel  
Susan Thadani, Investigator  
Cheryl Thompson, Executive Assistant  
Renee Threadgill, Chief of Enforcement  
Linda Whitney, Chief of Legislation

**Members of the Audience:**

Claudia Breglia, California Association of Midwives  
Yvonne Choong, California Medical Association  
Kathleen Clark, Ph.D., Servant Lawyering  
Zennie Coughlin, Kaiser Permanente  
Frank Cuny, California Citizens for Health Freedom  
Julie D'Angelo Fellmeth, Center for Public Interest Law  
Jimmy H. Hara, M.D.  
Faith Gibson, Midwifery Advisory Council  
Frank Lucido, M.D., medicalboardwatch.com  
Brett Michelin, California Medical Association  
Roz Pulmano, Senate Business and Professions Committee  
Carlos Ramirez, Senior Assistant Attorney General  
Rehan Sheikh  
Harold J. Simon, M.D., Ph.D., Medical Consultant

**Agenda Item 2 Introduction and Swearing In New Board Member**

Dr. Fantozzi introduced and swore in Dr. Sharon Levine as a new member of the Board.

**Agenda Item 3 Approval of Minutes from the January 29-30, 2009 Meeting**

Ms. Yaroslavsky made a motion to approve the minutes from the January 29-30, 2009 meeting.  
Mr. Zerunyan seconded the motion; motion carried.

**Agenda Item 4      Presentation of Physician Humanitarian Award**

Dr. Fantozzi presented the 2009 Physician Humanitarian Award to Dr. Jimmy Hara in recognition of his many years of outstanding volunteer work and service to the medically underserved at the Venice Family Clinic and the Los Angeles Free Clinic. Dr. Hara was also applauded for his work with many patient-advocacy organizations, including the Health Professions Education Foundation, and his commitment to the most vulnerable patient populations.

**Agenda Item 5      Public Comment on Items Not on the Agenda**

Kathleen Clark, Ph.D., J.D., Servant Lawyership, spoke about the need to bring together physicians, hospitals, lawyers, insurers, regulators, and patients in a creative alliance in order to collaboratively problem solve issues related to medical errors and patient safety. Dr. Clark is working to structure a 3-day online dialogue among stakeholders to discuss issues associated with adverse medical events, disclosure, and collaborative law (a non-adversarial alternative to traditional medical malpractice litigation). She asked the Board to take part in this dialogue and to consider expanding its role in promoting patient safety by creating a blame-free medical error/adverse event reporting. Dr. Clark also encouraged disclosure training for physicians and other health care workers as well as a culture shift away from enforcement and toward prevention.

Frank Lucido, M.D., stated his desire for more primary care providers to make medical cannabis recommendations and would like to see cannabis become an over the counter medicine for adults.

Frank Cuny, California Citizens for Health Freedom, asked the Board to assign a committee to study and make recommendations to the full Board regarding changes to the code that would enable physicians and licensed naturopathic doctors to offer alternative cancer treatments under specific conditions.

**Agenda Item 6      REGULATIONS – PUBLIC HEARING**

Dr. Fantozzi opened the public hearing on the proposed regulation to amend Section 1338 of Title 16 of the California Code of Regulations as described in the notice published in the California Regulatory Notice Register and sent by mail to those on the Board's mailing list. The Board seeks to amend the regulation related to Continuing Medical Education audits by proposing to move from conducting one large and voluminous audit once a year to performing the audit in twelve equal batches throughout the year. For the record, Dr. Fantozzi stated the date was May 8, 2009; the hearing began at approximately 9:15 a.m. No written testimony was received by the April 27, 2009 deadline. No oral testimony was offered. Dr. Fantozzi closed the hearing. Ms. Yaroslavsky made a motion to approve the regulation; s/Schipske; motion carried.

**Agenda Item 7      President's Report**

Dr. Fantozzi reported that he, Barb Johnston, Ms. Chang and Dr. Moran recently attended the Federation of State Medical Board's (FSMB) annual meeting in Washington, D.C. At the meeting, he provided a presentation on the Board's innovative approach to promote Physician Health programs beginning in medical schools and continuing throughout a physician's entire career. Dr. Fantozzi indicated feedback from his presentation was overwhelming with board members from many other states offering their support for the Board's new focus to be more proactive in efforts to prevent physicians from jeopardizing public safety and also potentially losing their career.

Dr. Fantozzi indicated Ms. Chang was a member of the FSMB Board and congratulated Dr. Moran on her election to the FSMB Nominating Committee at this conference.

**Agenda Item 8      Appointment of Board Member to the Health Professions Education Foundation**

Dr. Fantozzi stated the Board appoints two members to the Health Professions Education Foundation (HPEF) and, for the past two years, he has served as one of these appointed members. Since his term on the Board is ending, Dr. Fantozzi asked for any Board members who were interested in serving on the HPEF to speak with him, Dr. Gitnick (who serves as the Chair of HPEF), or Barb Johnston (who is also a member of the Board of Trustees of HPEF).

**Agenda Item 9      Executive Director's Report**

**A.      Budget Overview and Staffing Update**

Ms. Johnston reported the Board's budget currently has no concerns. Since the budget for FY 09-10 has been approved, she indicated the staff is moving forward with hiring for Operation Safe Medicine and the Probation Unit. In addition, she reported the staff is preparing budget change proposal requests for the funding for the CRIMS project (a new Enforcement IT system), additional staff for the licensing application unit, and additional staff for the Board's Call Center.

Ms. Johnston reported the Board is continuing to fill vacancies. Although the "designated" furlough days have stopped, staff are still receiving a 10% reduction in pay and are given two furlough days each month which can be taken upon request. This has continued to affect productivity and morale in both enforcement and licensing.

**B.      Update on AB 329 Meeting on April 23, 2009**

Ms. Johnston reported, pursuant to AB 329, an interested parties meeting was held on April 23, 2009 regarding the Board's proposed pilot for the telemedicine chronic care disease management program. Dr. Nuovo and his project team members provided a presentation on the Telemedicine pilot program and what they hoped to accomplish. Ms. Johnston stated the meeting was well

attended with participants from UCSF, Intel, the California Center for Connected Health, Accenture, the Russian American Media, and the Caldorado Group. The Board is currently going through the contract process so this project can begin.

In addition to several legislative hearings, Ms. Johnston has attended meetings with the Department of Consumer Affairs (DCA) on various topics, including the recent DCA sponsored roundtable discussion regarding DCA's plan to sponsor another summit in 2010.

Renee Threadgill, Kimberly Kirchmeyer, and Ms. Johnston have also been meeting with the various Attorney General's (AG) Offices across the state to discuss concerns or issues between the AG's office and the Medical Board. Ms. Johnston reported these meeting have been informative and encourage ongoing open communication.

On April 15, 2009, Ms. Johnston participated in a DCA sponsored Healing Arts roundtable or "mini summit" where best practices, outreach and educational efforts, disparities of care in underserved communities, and workforce shortages were discussed. Secretary Fred Aguiar, who was recently appointed as the new Secretary of State and Consumer Services Agency, attended the meeting and provided opening remarks.

Diane Ingram, Kimberly Kirchmeyer, and Ms. Johnston also attended a meeting with the State and Consumer Services Agency's Chief Information Officer and other boards regarding the State's Chief Information Officer's recommendation for consolidation of services to improve efficiencies and control costs. Ms. Johnston reported this was a productive and helpful meeting in which Agency discussed the long term plan for IT consolidation.

On May 6, 2009, Ms. Johnston reported that she and Ms. Kirchmeyer attended the second meeting of the SB 1441 Substance Abuse Coordination Committee. At the meeting, uniform standards were discussed. These meetings will continue in order to comply with the requirements of SB 1441.

Ms. Johnston stated she and Ms. Threadgill continue to meet with David Chaney, Chief Assistant Attorney General, Civil Law Division, and Carlos Ramirez, Senior Assistant Attorney General, to discuss enforcement issues on a quarterly basis.

Ms. Johnston reported she recently attended the American Telemedicine Association's annual conference where she gave a presentation regarding telemedicine legislation in California and the Board's proposed Telemedicine pilot focused on chronic disease management.

As mentioned by Dr. Fantozzi, Ms. Johnston attended the FSMB annual conference in Washington, D. C. Ms. Johnston reported the meeting was well attended by representatives from all state medical boards and allowed participants to become informed regarding issues related to medical boards at a national level. Dr. Fantozzi and Ms. Johnston participated in the FSMB strategic planning session and were able to offer input.

**Agenda Item 10      Approval of Amendments to Board Member Administrative  
Procedure Manual Regarding Communication with Interested Parties**

Ms. Johnston directed members to page 88 of their agenda packets. At the last board meeting, members directed staff to update the Administrative Procedure Manual based on the vote concerning interested parties communications. Ms. Johnston reported staff have completed the update and are requesting approval of the changes. Members also requested more information on how other boards or agencies address these types of communications. Ms. Johnston directed members to pages 90-99 of their packets for a descriptive memo from Janie Cordray regarding this matter. Ms. Johnston asked for approval of the edits on page 88 of their packets.

Ms. Schipske made a motion to approve the amendments to the Board Member Administrative Procedure Manual; s/Moran; motion carried.

**Agenda Item 11      Board Member Communications with Interested Parties**

Dr. Fantozzi asked if any members have had communication with any interested party such as an advocate, vendor, legislator, or other entity regarding any matter pending or likely to be pending before the Board.

Ms. Yaroslavsky disclosed she spoke in the Assembly Business and Professions Committee and with legislators about bills the Board is sponsoring.

Dr. Gitnick disclosed he has spoken with Governor Schwarzenegger and Herb Shultz, Senior Advisor to the Governor, regarding issues related to the Board; he also spoke with counsel for the University of California regarding issues in licensure for new applicants scheduled to start work in the University of California system in July 2009.

Dr. Fantozzi disclosed communication with the Governor's Office regarding membership on the Board, as well as other issues before the Board. He also has had communications with the Medical Director of the Florida Physician Health Program regarding physician health programs.

**Agenda Item 12      Licensing Chief's Report**

**A.      Licensing Program Update**

Ms. Pellegrini stated her priority for the past ten months has been to work with Ms. Johnston and Ms. Kirchmeyer to finalize all of the licensing unit's policies and procedures. She reported each year the Licensing Program receives an influx of applications from residents needing licensure by July 1; this makes up 16% of the program's workload, or 1,000 applications. Program staff are also processing applications from out-of-state physicians who have fellowships starting on July 1, as well as international medical school graduates who have received their "match" and require a Post Graduate Training Authorization Letter (PTAL) by July 1. To manage this surge of applications, Kevin Schunke has worked with all of the California postgraduate training

programs and developed a comprehensive list of every applicant who needs licensure by July 1, 2009 so they may continue their residency training. These applicants are the Board's first priority and receive preferential processing. Ms. Pellegrini anticipated all of the applications that have already been received will be reviewed by next week with the applicants being notified of any missing documents required for licensure. If the Board receives all of the required documents, licensing these individuals by the July 1, 2009 deadline should be achieved.

Ms. Pellegrini reported during the first three fiscal quarters of this year, the Board received 500 more applications than during this same period last year. Unfortunately, with the Governor's executive order, the elimination of staff overtime and temporary help, in addition to the two furlough days per month, a backlog of physician and surgeon applications beyond the 60 working days exists. The backlog had grown to over 500 applications at the end of March, but, with the hiring of six temporary staff in January to focus on U.S. medical school applicant reviews, the backlog dropped by 20% in just one month. Ms. Pellegrini stated Licensing staff hopes to continue reducing the backlog; however, she reassured the Board the first priority was those applicants continuing their residency programs.

With the Board's new web based phone system, Ms. Pellegrini noted all contacts are now digital, are integrated with our web features, and provide the ability to track, route, and record calls. Since the implementation of the phone system in December, the call volume has increased 50%, with over 500 calls a day being received in the Call Center.

Ms. Pellegrini stated more staff is required in the Licensing Program, but determining the most effective processes to provide better customer service and public protection is necessary in order to calculate the appropriate staffing levels. A consultant was chosen via a competitive procurement process to conduct a business process re-engineering study that will begin in June 2009.

Given the backlog, Dr. Low suggested offering applicants an expedited licensing process for an additional fee. Ms. Pellegrini replied the Board would not be able to offer such a service until the Licensing Program had more staff.

Dr. Gitnick thanked Ms. Pellegrini for her efforts to improve the Licensing Program. While acknowledging the need for additional staff, he emphasized the need for those in post graduate training programs to be licensed in order for the University of California healthcare delivery system to function and provide healthcare to individuals in the state. Dr. Gitnick reported he has been approached by leaders of three of the university institutions seeking a solution for the licensing of their residents by the July 1 deadline.

Ms. Pellegrini reiterated that these applications are being taken out of date order and are given priority handling. She referenced the comprehensive list that was developed by Kevin Schunke of those requiring licensure by July 1, 2009; the list is updated daily and regular reports are sent to the fifty plus post graduate medical training programs on the status of each of their applicants.

Ms. Pellegrini reported there are currently 67 applicants who have still not submitted their application for licensure to the Board; this information has been relayed to the various programs.

Dr. Gitnick asked Ms. Pellegrini to send a written response to Ms. Andrea Resnick in the University of California Office of the President to address how the Board is working to meet the deadline. Specifically, he suggested attaching a list of those 67 individuals who have not yet applied for licensure.

Ms. Yaroslavsky stated her concern that the re-engineering study Ms. Pellegrini reported on would be conducted for a period of only three months and would be done over the summer months when the number of applications is typically down. She suggested a longer period of study might be more appropriate and suggested leaving this possibility open in the contracting process. Ms. Pellegrini noted the contract with the vendor requires them to return 90 days after the final report is issued to review the Licensing Program's progress in implementing the recommended processes and make revisions, as necessary.

#### **B. Midwifery Advisory Council Report**

Faith Gibson reported Dr. Haskins, Vice Chair of the Midwifery Advisory Council (MAC), has been leading a work group to review and make recommendations for changes in the 2009 licensed midwifery annual report in order to provide reliable data. Dr. Haskins reported on the recommendations which were approved by the MAC. The revised annual report will be available in both hard copy and online formats.

Ms. Gibson indicated the MAC is involved in on-going activity to develop an educational program that will provide remedial training as a term and condition of probation in quality of care cases. The Board of Registered Nursing's disciplinary processes include four outsourced education programs for certified nurse midwives with quality of care issues. The MAC is searching for comparable resources for licensed midwives. Ms. Gibson reported the Council has decided to conduct a roundtable discussion with interested parties in June 2009 to review education programs for remedial training.

Ms. Gibson reported the MAC has decided to table discussion on physician supervision of licensed midwives until after the 2009 annual report is issued. The next MAC meeting will be June 17 or 18, 2009 in Sacramento.

Ms. Gibson requested the opportunity to introduce regulatory language which would permit, as part of the annual reporting of statistics, collecting additional information on maternal mortality within six weeks of giving birth, still birth at term, or a newborn who dies within 28 days of either being born at home or transferred to the hospital as a result of midwifery care. Ms. Scuri indicated the Board had already given the MAC the responsibility to work with respect to the annual report and, therefore, did not need further action from the Board.



**Agenda Item 13      Midwifery Advisory Council Appointments**

Dr. Fantozzi asked the Board to approve Dr. Carreon and Ms. Karen Ehrlich to be appointed to the Midwifery Advisory Council. Dr. Duruisseau made a motion to approve the appointments; Ms. Yaroslavsky seconded the motion; motion carried.

**Agenda Item 14      International Medical School Regulations: Request to Set for Hearing (CCR, Title 16, Section 1314.1)**

Ms. Pellegrini reported at the July 25, 2008 Quarterly meeting, the Board approved a proposal for staff to update the international medical school regulations based on changes the Liaison Committee of Medical Education had made to its standards for accrediting US and Canadian medical schools. An interested parties meeting was held on March 25, 2009 to allow those parties affected by the amendments to provide feedback. Revisions were made based on the comments received. Staff determined further refinements were needed to include medical schools whose purpose is to educate the citizens of its own country to practice medicine in those countries that are not government owned and operated, but may be operated privately by religious orders, trusts, or societies with governmental approval. The Addendum to this agenda item was distributed to members last week and was made available to the public. Ms. Yaroslavsky made a motion to set for regulatory hearing at the July 2009 Board meeting the proposed amendments along with any edits or additional provisions set forth by the Board; the motion was seconded.

During public comment, Dr. Harold Simon, professor of International Health Policy at UC San Diego and medical consultant to the Board, reported that Section 1314.1(a), paragraphs (1) and (2) in the addendum of proposed regulations state international medical schools' primary purpose is educating its own citizens to practice medicine in that country, but there is no reference in paragraph (1) that the medical school be a component of a university offering other graduate and professional degree programs. He sees this as a discrepant set of requirements and asked if this should be amended by the Board.

Ms. Scuri indicated this part of the regulation has caused the most difficulties because it attempts to draw a line between those schools which require an actual application and visit by the Medical Board versus those schools which, given the high probability that they are real schools equivalent to those in the US, would not require that. The requirement that the schools be a component of a university offering other graduate and professional degree programs is missing, largely due to the fact that certain of the schools the Board has already gone through the process of recognizing would not meet this criteria. Adding this requirement would put the Board in the position of having to "un-recognize" schools that have already been recognized. From a legal standpoint, Ms. Scuri recommends this requirement not be added.

Dr. Simon asked if it would be possible to grandfather in the currently approved schools while still adding the requirement for the future recognition of schools. Ms. Scuri stated this would mean delaying the proposed regulations. One of the reasons the Board is trying to move forward

with these regulations is because the schools that have already been recognized are going to be coming up for the seven year evaluation; it would be helpful to have the normal regulations in place before those visits occurred. Ms. Scuri reported the Board could always choose to amend the regulations in the future.

Members discussed the pros and cons of adding the requirement that a medical school must be a component of a university offering other graduate and professional degree programs, rather just a “stand alone” medical school.

Dr. Simon stated his concern with Section 1314.1 (14)(e)(3) and (f) in the addendum of the proposed regulations which reference a “resident” (or “on site”) course of instruction. For medical schools in the Caribbean, “resident” can only be applied to the first two years of instruction since these schools farm out their students to hospitals, primarily in the United States and the United Kingdom. Since the wording of this part of the regulations has not been an issue in the past, Ms. Scuri stated her concern with changing the regulatory language which could create the impression that the standard for recognition had been changed.

Dr. Levine asked if there were substantial differences among states in their approach to the recognition of international medical schools. Dr. Fantozzi reported California is one of the few states that have a rigorous review and approval process. Ms. Chang stated the Educational Commission for Foreign Medical Graduates (ECFMG) does not certify individual medical schools; California has the best program nationwide for the recognition of schools. Ms. Schipske reported many other states use our Board’s approval process as a basis for their own approval, rather than having their own review process which is both complex and costly.

Members decided to proceed with the regulations as they are written in the proposal.

Dr. Fantozzi called for the vote. The motion to set CCR, Title 16, Section 1314.1 for regulatory hearing was approved.

## **Agenda Item 15      Legislation**

### **A.      Status of Regulatory Action**

Linda Whitney, Chief of Legislation, directed the Members to page 113 of their packets to view the status of pending regulations. Ms. Whitney reported the Board has no outstanding regulations at this time.

### **B.      2009 Legislation and Proposals**

Kelly Nelson distributed a calendar for the legislative session to members and the public. Ms. Whitney reported June would be busy with hearings on policy bills.

Ms. Whitney referred Members to the 2009 Board Legislative Proposals and the color-coded tracker listing in the Legislative packet that was mailed to members and made available to the public.

Ms. Whitney directed member to the Board Sponsored Bills:

**AB 501 (Emmerson)                    Licensing: Limited License, Use of M.D., Fee/Fund**

Ms. Whitney indicated this bill is on the Assembly floor. The language on the use of M.D. is still being completed. The University of California system supports this legislation.

**AB 1070 (Hill)                        Enforcement Enhancements: reporting, public reprimand**

This bill is currently in Senate Appropriations. Opposition to the bill has been received from the California Medical Association (CMA); additionally, the Republican Caucus did not support the bill. Staff continues to work with the interested parties to address concerns.

**SB 819 (B&P Committee)    Omnibus: provisions from 2008 and**

**SB 821 (B&P Committee)    Omnibus: MBC provisions**

Ms. Whitney reported there is no opposition to these bills.

**Former AB 1094**

Ms. Whitney reported the Board's Wellness bill is not included on the tracker list. The State and Consumer Services Agency informed the bill's author the Administration would oppose the bill, thus it was dropped. Dr. Duruisseau will report on the status of this issue in his Wellness Committee report.

Ms. Whitney reported the Executive Committee took the proposed positions on the following bills at their March 25, 2009 meeting. Staff concurs with these positions. The bills have not been significantly amended in a way that would change the position on the bill and Ms. Whitney recommends the full Board vote on these bills as a consent item.

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|--------------------------------|--|
| <b>AB 583 (Hayashi)</b>        | <b>Disclosure of Education and Office Hours - Support if amended</b> |
| <b>AB 602 (Price)</b>          | <b>Dispensing Opticians - Watch</b>                                  |
| <b>AB 718 (Emmerson)</b>       | <b>Electronic Prescribing Pilot Program - Support</b>                |
| <b>SB 92 (Aanestad)</b>        | <b>Health Care Reform - Watch</b>                                    |
| <b>SB 132 (Denham)</b>         | <b>Polysomnographic Technologists (urgent) - Support</b>             |
| <b>SB 389 (Negrete McLeod)</b> | <b>Fingerprinting - Support</b>                                      |
| <b>SB 470 (Corbett)</b>        | <b>Prescriptions: labeling - Support</b>                             |
| <b>SB 683 (Negrete McLeod)</b> | <b>Regulatory Boards: joint committee on operations - Support</b>    |

Dr. Duruisseau made a motion to accept the Executive Committee's recommended position on the above listed bills; s/Schipske; motion carried.

Ms. Whitney directed member to the bills on peer review. She stated Dr. Low has participated in the hearings regarding peer review.

<b>AB 120 (Hayashi)</b>	<b>Peer Review: 809 Sections</b>
<b>AB 834 (Solorio)</b>	<b>Health Care Practitioners: peer review</b>
<b>SB 58 (Aanestad)</b>	<b>Physicians and Surgeons: peer review</b>
<b>SB 700 (Negrete McLeod)</b>	<b>Healing Arts: peer review</b>

Ms. Whitney indicated the Board will not discuss AB 120 (Hayashi) Peer Review since this bill only deals with the 809 hearing process; however, staff will continue to watch this bill, even though it is not related specifically to the Board.

Ms. Whitney reported AB 834 has become a two-year bill and has been held in committee; hence, it was not discussed.

Ms. Whitney reviewed a matrix that was distributed to members and the public which compared the four peer review bills.

With regard to SB 58, Ms. Whitney recommended taking an oppose unless amended or neutral if amended position, depending on how the Board felt about the bill's requirement to confirm by independent investigation that a summary suspension is supported by substantial evidence. If the Board is supportive of the concept of a remediation or early detection program and would like to see this move forward, she recommended a neutral position; however, if the Board felt a remediation program was not something they could support as a consumer protection agency, then an oppose unless amended position would be more appropriate.

During discussion on SB 58, Dr. Low stated the Lumetra report concluded the peer review process was broken. He felt, in instances of summary suspensions, it is the Board's obligation to verify the authenticity of the suspension. Dr. Low was concerned that the peer review process in some institutions was inadequate, and, until good, standardized peer review was in place throughout the state, the Board should have its own independent investigation to make sure the suspension is warranted. Dr. Carreon stated peer review should be independently conducted by medical staff, however, he noted the administration typically involves itself in the process with its own political or economic agendas. Dr. Salomonson also supported the concept of an independent investigation of the summary suspension.

With regard to the early detection component of SB 58, Dr. Moran stated she agreed with the concept of early detection, noting hospital staff are often reluctant to report physician impairment since this is such a big step; the early detection program allows staff to take matters into their own hands until they are sure there really is a problem. Dr. Levine is in support of this "proctoring" period where the Board is put on notice but the physician is given an opportunity to hone clinical skills and improve identified areas of concern. Dr. Fantozzi agreed the concept of early intervention was positive, however, he felt the execution and the details become an issue.

Dr. Low made a motion to take a watch position on SB 58; the motion was seconded.

Julie D'Angelo Fellmeth, Center for Public Interest Law, reviewed the conclusions of the Lumetra report, referencing the finding that many physicians and their attorneys are confused by the language of the current Section 805 as to when or whether they are required to file an 805 report with the Board. She stated SB 58 does not clarify the 805 filing requirements. As the former Enforcement Monitor for the Board, Ms. Fellmeth reported she found that Section 805 reports were the most reliable source of information that led to disciplinary action in high priority cases. However, Ms. Fellmeth indicated the Board is receiving fewer 805 reports every year. She felt it was asking too much of the Board's enforcement staff to conduct an independent investigation of whether an 805 action or process was legitimate before disclosing it, as the current law allows. Further, Ms. Fellmeth stated that investigating how the hospital review board did the peer review action was not the business of the Medical Board; this is between the physician and the hospital, with numerous protections for the physician and procedures laid out in statute as to how the peer review process is to be conducted. She urged the Board to oppose SB 58's requirement that the Board conduct an independent investigation of summary suspensions.

With regard to the early detection component of SB 58, Ms. Fellmeth felt there was a lack of clarity in the kinds of situations under which a hospital may refer a physician into an early detection and resolution (EDR) program, and feared this may weaken the peer review reporting process. Ms. Fellmeth also expressed her concern over Section 805.8(e) which states a physician or surgeon who successfully completes EDR shall not be subject to any disciplinary action. She felt it would be very unwise for the Board to ever be deprived of its discretion to investigate or take disciplinary action against a physician for anything.

Dr. Fantozzi called for the vote; the motion to take a watch position on SB 58 carried.

In reference to SB 700, Ms. Whitney indicated both staff and the Executive Committee issued a recommendation of support. Rosielynn Pulmano, Senate Business and Professions Economic Development Committee staff, stated SB 700 would give the Board early information about physicians delivering substandard care and would empower the Board to take whatever appropriate action it deems necessary against any of its licensees.

Ms. Whitney reported the original concept of Section 805 was public protection and that the Board was always meant to get the 805 reports, even if the matter did go to hearing. SB 700 clarifies the 805 must be reported.

Mr. Zerunyan made a motion to take a support position on SB 700; s/Yaroslavsky.

Brett Michelin, CMA, reported CMA opposes this bill and continues to have discussions with the author. Their concerns include the provision that the Board remove information when a court finds the 805 was submitted in bad faith since the courts very rarely make this finding. CMA believes this offers very little protection for physicians. Additionally, Mr. Michelin stated the redefinition of peer review is too broad under this bill and would require any clinic, including individual physician offices, to conduct peer review. Currently, most physicians are covered by their hospital's peer review body, group peer review body, or medical malpractice coverage, so

this redefinition is not necessary. Mr. Michelin stated the CMA does not consider the 809 hearing the place to go for an appeal, but rather where the physician exercises his right to test the finding made by the peer review body. Hence, Mr. Michelin stated it is unfair to move quality of care implications into early 805 reporting before the physician has had the opportunity to question his or her accuser.

Dr. Levine asked for clarification on the bill's requirement on a clinic, including a single physician office, to conduct peer review. Ms. Pulmano responded the wording was originally amended due to findings in the Lumetra report regarding physicians who operate independently and are not subject to a peer review body. She indicated the author is willing to restore the original definition of a peer review body in order to address CMA's concern and move the bill forward.

Dr. Fantozzi called for a vote. The motion to take a support position on SB 700 carried.

Ms. Whitney directed members to the three bills dealing with the employment of physicians:

<b>AB 646 (Swanson)</b>	<b>Physician Employment: district hospital pilot project</b>
<b>AB 648 (Chesbro)</b>	<b>Rural Hospitals: physician employment</b>
<b>SB 726 (Ashburn)</b>	<b>Hospitals: employment of physician; pilot project revision</b>

Ms. Whitney reviewed a matrix that was distributed to members and the public which compared the three bills proposing an extension to the current pilot program that allows specified district hospitals to employ physicians. Ms. Whitney recommended the Board support the concept of extending the pilot program, but not select any one bill as the one the Board will support. Additionally, she recommended specifying that only one of the pilot expansions should go to the Governor or else the expansion would be too large and require extensive staff resources to track all of these physicians.

Ms. Yaroslavsky made a motion to support in concept the extension of the pilot program and not any one bill specifically; s/Zerunyan.

Brett Michelin, CMA, stated CMA opposes expanding the corporate practice of medicine and allowing hospitals to directly employ physicians, since it raises into question the quality of care that will be provided when hospitals are allowed to charge for the services of physicians. However, CMA recognizes there are areas of the state where access is severely limited. CMA has taken a neutral position on SB 726 since it is very narrow in who it allows to participate in the pilot; they have taken an oppose position on AB 646 and AB 648 since they believe it takes the corporate practice of medicine too far.

Dr. Fantozzi called for vote; the motion to support in concept the extension of the pilot program carried.

**SB 674 (Negrete McLeod) Outpatient settings / Advertising**

Ms. Whitney reported this bill covers a variety of subjects, including advertising outpatient settings, accreditation requirements, supervision of laser and intense pulse light device procedures, the wearing of nametags, and public information. Details of the bill's requirements were included in the legislative packets.

Ms. Whitney indicated the Executive Committee took a support if amended position. She reported the bill is still being worked on and amendments are being discussed. Ms. Whitney recommended a "support if amended" position with work on areas of concern regarding the date the regulations need to be adopted and clarification on whether the Board or the accreditation agency would be responsible for inspections of outpatient settings.

Ms. Yaroslavky made a motion to support if amended; s/Salomonson.

Ms. Yaroslavsky asked for clarification on who currently inspects surgery centers. Ms. Whitney responded outpatient surgery settings are inspected by the accrediting agency; the licensed surgery settings are inspected by the Department of Public Health. Currently, the Board does not inspect surgery centers.

Ms. Whitney reported outpatient settings are defined by the use and level of anesthesia used on patients. This bill would add in vitro clinics and assisted reproductive clinics that are not already licensed and do not currently fall under the definition of outpatient setting (due to the level of anesthesia used) to the list of outpatient settings requiring inspection. The Board would be able to write its own regulations and standards for these settings if needed to differ from the current outpatient setting regulations.

Ms. Schipske stated the bill's author should be notified that in B&P Code Section 651, there should be a designation for registered nurse practitioners since they are a separate designation under law, and also, for in vitro and assisted reproduction, certified nurse midwives should be included since they often do this type of work in the clinics

Dr. Fantozzi called for the vote; the motion to support SB 674 if amended carried.

**AB 175 (Galgiani) Telemedicine: Optometrists**

Ms. Whitney reported this bill would allow optometrists to perform telemedicine within their scope of practice. The bill specifies in cases where a reviewing optometrist identifies a disease or condition requiring consultation or referral, the consultation or referral must be with the appropriate physician or ophthalmologist.

Ms. Yaroslavsky made a motion to support AB 175; the motion was seconded and carried.

**AB 245 (Ma) Disclosure Verification**

Ms. Whitney informed members this bill would require the Board to verify the accuracy of information posted on its website regarding enforcement actions or other items required to be

posted. Additionally, this bill would require the Board to remove any expunged convictions within 30 days.

Ms. Whitney reported the sponsor of the bill states the reason behind the bill is due to 31 physician members who had false reports of medical discipline transmitted to the Board. She indicated these were 805 reports which are not under the Board's control in terms of transmission to the Board. Ms. Whitney also reported there would be considerable cost to this verification.

Ms. Whitney indicated the bill was not fully developed when it was originally presented to the Executive Committee where they took a watch position on the bill. Staff is now recommending an oppose position.

Ms. Yaroslavsky made a motion to oppose AB 245; Ms. Chang seconded the motion.

There was discussion by members on the value and ability of the Board to verify all of the information posted on its website. Members felt the bill's verification requirements were too broad and would create an undue burden on the Board. However, there was concern among members on the posting of 805 reports without verification, even though the posting of these reports are required by law. Staff indicated this could be addressed through regulations regarding the disclaimer that appears with the posted information.

Dr. Fantozzi called for the vote; the motion to oppose AB 245 carried.

Dr. Fantozzi asked Ms. Whitney to return with suggestions of how the Board might proceed to address the concerns raised during the discussion for future consideration.

**AB 252 (Carter)                      Cosmetic Surgery: employment of physicians**

Ms. Whitney indicated this bill addresses violations of the corporate practice of medicine in the cosmetic medicine industry, specifying that non-physician entities owning cosmetic practices and providing medical treatments are in violation of the corporate practice laws. The bill would make the violation of the corporate practice laws a felony for non-medical entities and grounds for license revocation for physicians who knowingly work or contract with these entities. The recommendation from the Executive Committee was watch; staff's recommendation is support.

Dr. Moran made a motion to support AB 252; the motion was seconded and carried.

**AB 356 (Fletcher)                      Radiological Technology: physician assistants**

Ms. Whitney reported this bill would allow physician assistants to take appropriate licensing exams for fluoroscopy and would include physician assistants as licentiates of the healing arts who are not required to have a Radiological Technician certification to do this procedure.

Dr. Low made a motion to take a support position on AB 356; s/Yaroslavsky; motion carried.



**AB 526 (Fuentes) Public Protection and Physician Health Program Act of 2009**

Ms. Whitney indicated this bill would establish a Public Protection and Physician Health Committee within the State and Consumer Services Agency (SCSA) with the intent of creating a program in California that would permit physicians to obtain treatment and monitoring for alcohol, substance abuse, or mental disorders. The bill would permit, but not require, the Board to increase licensing fees in order to pay for this program; the fees would be transferred to the State and Consumer Services Agency. The Executive Committee took a watch position on the bill since it was not fully developed at the time. Staff recommendation is neutral since the bill, in its current form, does not impact the Board in the programmatic sense and does not require the Board to collect the fees.

Ms. Yaroslavsky made a motion to adopt a neutral position on AB 526; Ms. Chang seconded the motion. The motion carried.

**AB 832 (Jones) Clinic Licensing: Workgroup**

Ms. Whitney reported this bill was designed to address the *Capen v. Shewry* issue. Due to significant opposition, the bill was amended in the Assembly Health Committee to delete all the provisions regarding the licensing of outpatient clinics. Under the bill, a workgroup would be convened to consider and develop recommendations for the oversight and monitoring of ambulatory surgical centers. Staff recommends a support if amended position to address the *Capen v. Shewry* decision for a minimum of one year while the workgroup develops its recommendations and legislation can be enacted.

Ms. Yaroslavsky made a motion to support if amended; s/Moran; motion carried.

**AB 933 (Fong) Workers' Compensation: utilization review**

Ms. Whitney indicated this bill clarifies current law to provide that physicians performing utilization review for injured workers must be licensed in California. The Board supported this legislation last year, which was vetoed. Staff recommends a support position.

Ms. Yaroslavsky made a motion to support AB 933; the motion was seconded and carried.

**AB 977 (Skinner) Pharmacists: Protocols with Physicians**

This bill was originally to allow pharmacists to administer flu and pneumonia vaccines to individuals; due to the opposition, the bill was amended to provide information to the Legislature and its committees on the status of the protocols for immunization that are supposed to be established between physicians and pharmacists. Staff recommends a watch position on the bill to make sure it does not come back as an immunization bill in order to ensure public protection.

Dr. Duruisseau made a motion to take a watch position on the bill; the motion was seconded and carried.

**AB 1116 (Carter) Cosmetic Surgery: physical examination prior to surgery**

Ms. Whitney reported this is the "Donda West" bill and would require physicians to conduct a physical exam on patients prior to performing cosmetic surgery. An identical bill passed last

year, but was vetoed by the Governor; the Board had taken a support position on the prior bill. The Executive Committee recommended an oppose position; staff recommendation is a support position.

Dr. Moran made a motion to take a support position on the bill; Dr. Salomonson seconded the motion.

Ms. Whitney stated if the Board took an oppose position on this bill, they would be indicating they oppose current law since dentists are already licensed to perform cosmetic surgery. Dr. Moran agreed with staff's recommendation, stating the bill would hold dentists to the standard of care and was an act of public protection.

There was discussion by members on whether the bill sufficiently addresses quality of care issues.

Dr. Fantozzi called for the vote. The motion to take a support position on AB 1116 carried.

Dr. Gitnick suggested that staff research whether there should be sponsored legislation which would address what is an appropriate release for anesthesia for any procedure. He suggested anesthesiologists could join in any sponsored legislation.

**AB 1310 (Hernandez) Healing Arts: database**

Ms. Whitney indicated this bill would require the Office of Statewide Health Planning and Development (OSHPD) to obtain additional data from all of the healing arts boards. The Board currently collects most of the data required in the bill, but the bill would require data collection on a few additional subjects. The information would be used by the OSHPD staff to make determinations on workforce planning. Staff recommends a support if amended to only require the location of the high school when a college degree or graduate education is not required, to make information on additional practice locations permissive, or to provide more time before these items are implemented since it will be difficult to obtain this information and post it on the Board's website.

Ms. Yaroslavsky made a motion to support AB 1310 if amended to reflect staff's recommendations; s/Levine; motion carried.

**AB 1458 (Davis) Drugs: adverse events: reporting**

Ms. Whitney reported this bill would require licensed health care professionals to report serious adverse drug events to the Federal Drug Administration (FDA) and would exempt violaters from related criminal provisions. The bill would increase the responsibility of health care providers, but provide more information regarding drugs to the appropriate authorities.

Ms. Yaroslavsky made a motion to support AB 1458; s/Zerunyan; motion carried.

Dr. Levine stated the FDA has agreed the MedWatch Program is essentially dysfunctional and is likely to be replaced with a more robust program not dependent upon voluntary reporting. She

questioned the wisdom of putting into statute a requirement to report to a program that may soon cease to exist. Ms. Whitney stated she would raise this issue with the author's staff.

#### **Agenda Item 16      Education Committee Update**

Ms. Yaroslavsky reported the Education Committee met on May 7, 2009 and continued its discussion on a regulatory proposal to require posting a sign regarding physician regulation by the Board. The Committee voted unanimously to recommend setting a regulatory hearing for July 2009.

Ms. Schipske made a motion to set the matter for regulatory hearing; s/Chang.

Mr. Zerunyan suggested the posted language be amended from "notice" to "notice to consumers" or "notice to patients". Additionally, he urged the Board to have the notice produced by the Board by making it downloadable from the Board's website; this would insure uniformity and would be easily recognized by patients. Ms. Scuri suggested this required format should be included in the regulation, rather than requiring the notice be obtained from the Board.

Dr. Gitnick asked if the notice would be required to be posted in every location where a physician sees patients, since some physicians see patients in a variety of exam rooms, clinics and offices. Ms. Yaroslavsky noted there are alternatives to posting a sign included in the regulations.

Dr. Fantozzi called for the vote. The motion to set the matter for regulatory hearing carried.

#### **Agenda Item 17      California Physician's Corp Program Update**

Ms. Yaroslavsky provided an update on the California Physician's Corp Program. She reported the Health Professions Education Foundation (HPEF) met to allocate funds to physicians serving in underserved communities throughout California to assist with loan repayment. These funds come from the \$25 mandatory physician licensing fee and on penalties imposed by managed health care. Ms. Yaroslavsky reported there were 51 completed requests for funding; 15 applicants were given awards to assist in loan repayment. The awards totaled \$1,510,027 out of a requested amount of \$4,767,000. Ms. Yaroslavsky noted the current need for assistance surpasses the funds available.

Ms. Chang and Dr. Duruisseau both expressed their interest in serving on the Health Professions Education Foundation. Dr. Fantozzi indicated he would discuss the duties involved with both interested members and a vote to appoint a member to the HPEF would be taken at a later time.

**Agenda Item 18 Wellness Committee Update**

Dr. Duruisseau reported the Wellness Committee was disappointed with the status of the proposed physician wellness legislation. The Committee met on July 23, 2009, where they directed Ms. Whitney to set up a meeting with the Governor's Office to discuss this matter further. Dr. Duruisseau expressed his hope that this will provide an opportunity to clarify any misconceptions or issues on the wellness legislation. He indicated several committee members have volunteered to attend this meeting.

In the meantime, Dr. Duruisseau reported the Wellness Committee continues to meet with staff and stakeholders to advance the wellness initiative. Articles are being written, a comprehensive physician inventory on best practices with regard to wellness programs is being initiated, and the Wellness Committee's website continues to provide information on physician wellbeing.

**Agenda Item 19 Physician Assistant Committee Update**

Dr. Low reported the workgroup dealing with CME requirements of 50 hours every 2 years has finalized their work and will present it at the next Physician Assistant Committee (PAC) meeting for consideration. If the proposed language is approved, a regulatory hearing would be set for later this summer.

Dr. Low stated a regulatory hearing was held in February 2009 to modify the license renewal to ask if the licensee has had any convictions during the previous license period. No public comments were received, so the rulemaking is moving forward.

The PAC voted to set for hearing a proposed regulation which allows citations to be issued for unlicensed practice.

The PAC voted to set for hearing a proposed regulation which allows for the fingerprinting of all licensees who were not fingerprinted as part of their initial licensure process.

In order to improve education of physician assistants on regulations, Dr. Low reported the PAC has developed an on-line self-assessment exam; it has been well received.

Dr. Low indicated there are 3 vacancies on the Committee, two physician assistants and one public member. The next meeting of the PAC will be on May 14, 2009 in Sacramento.

**Agenda Item 20 Ethical Decision Making for Regulators**

Ms. Scuri provided training on potential ethical dilemmas the members might encounter and suggested strategies for resolving those dilemmas. The presentation included a review of the Bagley-Keene Open Meeting Act, as well as the need to disqualify oneself or abstain from voting on particular Board issues when a conflict of interest or personal bias exists.

**Agenda Item 21      Enforcement Chief's Report**

**A.      Approval of Orders Restoring License Following Satisfactory Completion of Probation, Orders Issuing Public Letters of Reprimand, and Orders for License Surrender During Probation**

Ms. Yaroslavsky made a motion to approve the orders; s/Schipske; motion carried.

**B.      Disciplinary Guidelines Regulations: Request to Set for Hearing (CCR, Title 16, Section 1316)**

Ms. Yaroslavsky made a motion to set the Disciplinary Guidelines for hearing; s/Salomonson; motion carried.

**C.      Expert Utilization Report Updates**

Ms. Threadgill directed members to the Expert Utilization Report in the agenda packets for review.

**D.      Enforcement Program Update**

Ms. Threadgill reported the vacancy rate for investigators remains around 10%. A supervising investigator has been identified for the Operation Safe Medicine program which will commence July 1, 2009.

**E.      Report on Classification Study for Investigators**

Ms. Threadgill directed members to page 155 of their packets to view the Investigator Classification Study. She expressed her disappointment with the report and indicated she will follow up with the contractor to see if the inadequacies could be addressed.

**Agenda Item 22      Vertical Enforcement Update**

**A.      Attorney General's Office Case Aging Statistics**

Carlos Ramirez, Senior Assistant Attorney General, Health Quality Enforcement Section, indicated, at the January 2009 meeting, several members requested statistical information on prosecution timelines. He directed members to tab 22 of their agenda packets for these statistics.

**B.      Vertical Enforcement Statistics**

Mr. Zerunyan expressed his concern over the length of the investigation to prosecution timelines. He requested recommendations be made at the next meeting on how to cut the timelines in half.

Mr. Ramirez responded the Attorney General's Office was requested by the Board last year to reduce the findings timeframe below 80 days; He reported the AGs Office has successfully cut the length of time from the date a case was accepted by the AG's office and the accusation sent. He stated the average is 53 days and the median is 35 days.

Ms. Yaroslavsky requested information be included on how furlough days, the inability to hire staff and have medical consultants and court reporters, and the lack of resources have impacted timelines. Ms. Threadgill indicated this information is included in the Vertical Enforcement (VE) Report. In general, Ms. Threadgill stated the Executive orders negatively impacted staff's ability to reduce investigation timelines. Mr. Ramirez reported prosecution timeframes were also negatively impacted by the Executive orders since the Board was unable to retain court reporters which resulted in delays.

Dr. Gitnick asked if it was possible to compare investigation and prosecution timelines from the time of the Enforcement Monitor's report, the time of the LA Times article, and today. Ms. Threadgill stated the VE Report provides a detailed analysis of these timelines.

### **C. Discussion on Status of Vertical Enforcement Report to Legislature**

Kenneth Kobrin, Integrated Solutions for Business and Government and vendor for the Vertical Enforcement Model Report to the Legislature, provided a brief overview of the report. He indicated statistics had been received from the Board. In addition, select personnel at various levels within the Board and the AG's Office have been interviewed for the report.

The data Mr. Kobrin presented provided a percentage comparison of the statistics from 2005 (pre-Vertical Enforcement) through the end of 2008. Although Mr. Kobrin indicated this was only a preliminary analysis, he reported it appeared on average that the investigations are taking longer, but those cases that are going to disciplinary action and resulting in discipline are taking somewhat less time.

Ms. Threadgill reported the complete Vertical Enforcement Model draft report will be presented to the Executive Committee for approval on June 18, 2009 and will be posted on the Board's website. Any feedback on the draft report should be provided to staff.

### **Agenda Item 23      Agenda Items for July 23-24, 2009 Meeting**

No agenda items were suggested for the July 2009 meeting.

Dr. Fantozzi thanked the Board and staff for their tireless effort and dedication to the work of the Board. He expressed his appreciation for the opportunity to serve and symbolically turned the gavel over to Barbara Yaroslavsky as the new Board president.

Dr. Gitnick reviewed Dr. Fantozzi's many contributions during his tenure as a member and president of the Board and thanked him for his leadership and devotion.

Ms. Johnston expressed staff's gratitude for Dr. Fantozzi's support and thanked him for his work on behalf of the public.

**Action Item 24      Adjournment**

There being no further business, the meeting was adjourned at 2:33 p.m.

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Richard Fantozzi, M.D., President

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Hedy Chang, Secretary

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Barb Johnston, Executive Director